



POLICE DEPARTMENT

November 28, 2022

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In the Matter of the Charges and Specifications :

- against - :

Police Officer Jason Garcia :

Tax Registry No. 967885 :

48th Precinct :

Case No.

2022-25889

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At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Rosemarie Maldonado
Deputy Commissioner Trials

APPEARANCES:

For the CCRB-APU:

Brian Arthur, Esq.
Civilian Complaint Review Board
100 Church Street, 10th Floor
New York, NY 10007

For the Respondent:

Michael Martinez, Esq.
Worth, Longworth & London, LLP
111 John Street, Suite 640
New York, NY 10038

To:

HONORABLE KEECHANT L. SEWELL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

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CHARGES AND SPECIFICATIONS

1. Police Officer Jason Garcia, on or about December 15, 2020, at approximately 1700, while assigned to the 48th Precinct and on duty, in the vicinity of [REDACTED] Bronx County, wrongfully used force, in that he used a chokehold against Complainant.

P.G. 221-01, Page 3, Prohibition 2

FORCE GUIDELINES

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on November 9, 2022. Respondent, through his counsel, entered a plea of Not Guilty. The Complainant did not appear to testify. CCRB entered into evidence body-worn camera footage of the incident. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having evaluated all of the evidence in this matter, the tribunal finds Respondent Not Guilty of the charged misconduct.

ANALYSIS

It is uncontested that on December 15, 2020, Respondent arrived on the scene of a dispute involving a machete. Upon arrival, the officers determined that there had been a physical altercation between residents of an apartment building and that the two parties involved would be arrested. The male neighbor was handcuffed without incident. Complainant resisted arrest.

The sole charge against Respondent alleges that he used a prohibited chokehold during this arrest. At trial, CCRB disclosed that Complainant had retained a private attorney to pursue a civil lawsuit and that she had been advised not to appear to testify at this disciplinary hearing. In support of its case, CCRB entered into evidence the body-worn camera footage of another officer at the scene.

The relevant portion of that body-worn camera recording depicts Complainant resisting arrest as uniformed officers attempt to move her from the apartment to the hallway.

Complainant is seen grabbing the doorframe to hinder the removal as she yells at the officers regarding her children. While the officers struggle to handcuff her, Complainant pulls her arm away from their grasp, removes her mask, screams and turns around to face them. (CCRB Ex. 1 at 10:16-10:18)

It is at this point that the recording captures Respondent's intervention. As Respondent stands to the left of Complainant, he reaches over with his left arm to grab her. (*Id.* at 10:17-10:18). Respondent's arm rests diagonally across Complainant's chest; with his forearm close to Complainant's left shoulder and his hand in a lower position grabbing Complainant's upper right arm, below the shoulder. The right side of Complainant's neck remains visible and unobstructed as Respondent maintains his hold. Respondent positions himself behind her, twists, pulls back and brings Complainant to the ground where she continues to scream and resist arrest. (*Id.* at 10:18-10:23) The entire maneuver lasts approximately three seconds. Given that Respondent rotates their bodies, the exact position of his entire left arm is not visible on the video when he pulls back. However, it does not appear that at any time Respondent wraps his arm around Complainant's neck or throat. Although not dispositive, it is also important to underscore that in her CCRB interview Complainant never alleged that a chokehold was used.¹

Patrol Guide 221-01 sets forth a two-prong test to determine whether a prohibited chokehold was executed. First, there must be "pressure to the throat, carotid artery or windpipe." Second, that pressure must be such that it "may prevent or hinder breathing or reduce intake of air or blood flow." Proof that there was incidental contact on or about the neck area alone is

¹ Complainant did not testify before this tribunal and neither party moved to admit her CCRB interview into evidence. Instead, the parties stipulated that at no point during her CCRB interview did Complainant allege that a chokehold was used or that her breathing was obstructed in any way. (Tr. 4-5) Thus, this sole specification against Respondent stems from CCRB's interpretation of the body-worn camera footage. (Tr. 3-4)

insufficient to support a finding that this proscribed tactic was used. *See Disciplinary Case No. 2014-11368*

Having reviewed the video carefully, this tribunal cannot reasonably conclude that the hold depicted made contact with the neck or throat area in a manner that may have restricted Complainant's breathing or reduced air intake, thereby constituting a chokehold. *See Disciplinary Case No. 2021-23756* As discussed in detail above, Respondent's arm was placed diagonally across Complainant's chest leaving one side of her neck exposed and unobstructed. Although Respondent pulls back, there is no reliable evidence that the pressure exerted was on her neck as opposed to the chest.

This tribunal also credited Respondent's straightforward and credible testimony concerning the steps he took to gain Complainant's compliance. Respondent testified that after Complainant slipped away from him, he stepped behind her and placed his left arm across Complainant's chest and placed his left hand on her right shoulder area. (Tr. 24, 37, 39) He then grabbed onto her shirt area and "pulled against [his] body weight in order to like leverage her body to tip over", and then "guided her down to the ground." (Tr. 24) Respondent denied that he put pressure on Complainant's neck. This tribunal concurs.

In sum, the evidence presented at trial is insufficient to establish that Respondent violated the Patrol Guide by using a prohibited chokehold. Accordingly, I find Respondent Not Guilty of the charged misconduct.

APPROVED

JAN 20 2023
[Signature]
KEECHANT L. SEWELL
POLICE COMMISSIONER

Respectfully submitted,

[Signature] By JSA
Rosemarie Maldonado

Rosemarie Maldonado
Deputy Commissioner Trials